

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT COURT OF MARYLAND

DIANA SMITH

Plaintiff,

vs.

CASE NO. 1:17-CV-03014 ELH

CAESAR'S LICENSE COMPANY, LLC,

Defendant.

_____/

The deposition of DIANA SMITH was held on Thursday, June 28, 2018, commencing at 10:30 a.m., at the Law Offices of The Stolarz Law Firm, 6509 York Road, Baltimore, Maryland 21212, before Steven Poulakos, Notary Public.

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REPORTED BY: Steven Poulakos, RPR

1 A Because I got hired with Horseshoe making
2 more money and I kind of figured I was trying to better
3 myself.

4 Q And today if I use you the term Horseshoe
5 or Caesars or the casino just to make it clear, we're
6 referring to the Horseshoe Baltimore Casino that's
7 operated by Caesars. Do you understand that?

8 A Yes.

9 Q So when were you hired by Horseshoe?

10 A July the 28th, 2014.

11 Q And what was your job when you were hired?

12 A Slot attendant.

13 Q And what shift did you work?

14 A When I first started working there, I was
15 working 1:00 to 9:00.

16 Q And how long did you work as a slot
17 attendant on the 1:00 to 9:00 shift?

18 A For about maybe three months.

19 Q And then what happened?

20 A I went to 11:00 to 7:00, I believe.

21 Q As a slot attendant?

1 A Yes.

2 Q And how long did you stay in that shift as
3 a slot attendant from 11:00 to 7:00?

4 A For about a year.

5 Q What did you do next?

6 A I went to morning 7:00 to 3:00.

7 Q Again as a slot attendant?

8 A Yes.

9 Q How long did you work in that shift as a
10 slot attendant?

11 A Until I transferred over into the beverage
12 department which was 2017, 2016.

13 Q When you transferred into the beverage
14 department, what was your job title?

15 A Beverage supervisor.

16 Q Was that a promotion?

17 A Yes.

18 Q And as a supervisor, did you supervise
19 other employees?

20 A Yes, ma'am.

21 Q How many?

1 Q And what job did Kristin Carter hold?

2 A She was the assistant manager.

3 Q Of beverage?

4 A Yes.

5 Q And she reported to Mr. Olaya?

6 A Yes.

7 Q Was she the Kristin that was on maternity
8 leave?

9 A Yes.

10 Q So do you recall about when it was that she
11 came back from maternity leave?

12 A No, I can't remember.

13 Q Do you know if it was in 2016?

14 A I can't remember.

15 Q Did you ever have the opportunity to bid
16 for a specific shift?

17 A No.

18 Q You mentioned the 2:00 a.m. to 10:00 a.m.
19 shift that you supervised approximately 25 employees.

20 A Yes.

21 Q When you worked other shifts, about how

1 many employees did you supervise?

2 A It was a little more. Probably about 30 to
3 40 maybe employees.

4 Q And that would be for the 11:00 p.m. to
5 7:00 a.m. shift?

6 A It would be, yeah, around about 11:00 p.m.
7 to 7:00 a.m. or it would be in the middle of the day
8 around about -- let me see, 11:00 p.m. to the 7:00 or
9 11:00 a.m. I think she had me come in 11:00 to 7:00,
10 11:00 in the morning until 7:00 in the afternoon.

11 Q And going back from the 11:00 a.m. to 7:00
12 p.m., you supervised 30 to 40 employees?

13 A About 30 to 40 employees because it would
14 be different people coming in different times of the
15 day. Like every two hours, more people would come in.

16 Q And when you worked the 7:00 a.m. to
17 3:00 p.m. shift, approximately how many employees did
18 you supervise?

19 A Around about 25. I think it was around
20 about 25 employees.

21 Q And are you on Facebook?

1 A Yes.

2 Q And what is your Facebook name, user name?

3 A Diana Smith Comegys, I believe.

4 Q And is that the name that you're found on
5 Facebook currently in 2018?

6 A Yes. Butterworth Comegys. My nickname is
7 Butter, but I put Butterworth and then Comegys again.

8 Q Do you know when you started using the
9 Butterworth?

10 A About a month ago.

11 Q One month ago?

12 A Yes.

13 Q Prior to May 2018, did you ever use the
14 Butterworth?

15 A No.

16 Q Did you ever use Butterworth on Instagram?

17 A No.

18 Q Prior to May 2018, what name did you use on
19 Facebook?

20 A Diana Smith Comegys.

21 Q And what about on Instagram?

1 A Diana Smith, I believe. Diana Smith.

2 Q And did you start using Facebook as early
3 as 2014?

4 A Um-hmm.

5 Q What about Instagram?

6 A It was around the same time, yes.

7 Q And have you used both of those social
8 media sites since 2014?

9 A Yes.

10 Q Are you friends in Facebook lingo with some
11 of the employees that you supervise at Baltimore
12 Horseshoe?

13 A To my knowledge, probably one or two
14 people.

15 Q Do you recall who those people are?

16 A It was Jackie Gist, but I believe she
17 deleted her Facebook post, and Shelby -- I think it was
18 Shelby. I don't know her last name. I didn't really
19 know her, but --

20 Q And Jackie, what position did she hold?

21 A She was a beverage server.

1 Q And what about Shelby?

2 A Server.

3 Q And did you supervise Jackie in 2017?

4 A Yes.

5 Q Did you supervise Shelby in 2017?

6 A We were switching out. I didn't supervise
7 her, but we was -- like as I was coming in, she
8 probably was about to go home.

9 Q So let me see if I understand this. As you
10 were coming in at 7:00 a.m., she was --

11 A No. It was actually overnight when she
12 was -- it was overnight around about 2:00 to 10:00. So
13 she'll be about to go home. She'll be on someone
14 else's shift and then I probably come in for about an
15 hour maybe and then she'll maybe leave or still be
16 under the other person, so --

17 Q So is it fair to say that at least for part
18 of 2017 that you were supervising Shelby for part of
19 her shift?

20 A Maybe, yes. If it was two supervisors, if
21 she already had the shift, then she would be

1 supervising her, but if I come in, then I probably will
 2 assist her during that and then they would leave. So
 3 I'm going to say, yeah, I would supervise her, but
 4 partly. There wasn't too much communication between
 5 us.

6 Q Other than Jackie and Shelby, were you
 7 friends with any of the other beverage supervisors on
 8 Facebook?

9 A Yes. I was friends with Lisa Petrovoli, I
 10 believe, and Katya Walters.

11 Q So they were beverage supervisors?

12 A Yes.

13 Q And just for me to clarify for the record,
 14 Jackie and Shelby were beverage servers?

15 A Yes.

16 Q And so other than Lisa and Katya, were you
 17 friends with any other beverage supervisors on
 18 Facebook?

19 A I was friends with Terrell. His name is
 20 Terrell. I forgot his last name, but I was friends
 21 with him. But that was before I became a beverage

1 take a look at it and tell me what it is?

2 A It's a handbook.

3 Q Okay.

4 A A handbook.

5 Q When you say it's the handbook, is it fair
6 to say that it's an acknowledgment that you received
7 the Horseshoe handbook?

8 A Can you rephrase that?

9 Q Certainly.

10 When you look at Exhibit DS-1, do you agree
11 that it's a one-page document?

12 A Yes.

13 Q And that the actual Horseshoe handbook is
14 more than one page; is that correct?

15 A Yes.

16 Q So DS-1, is that a document signed by you
17 where you're saying that you received a copy of the
18 Horseshoe handbook?

19 A Yes, that is my signature.

20 Q Okay. And do you recall receiving a copy
21 of the Horseshoe handbook?

1 A I don't recall, but if I signed, I'm quite
2 sure I did.

3 (Smith Exhibit 2 was marked for purposes of
4 identification.)

5 BY MS. FRIEDMAN:

6 Q Ms. Smith, you've just been given a new
7 document that's been labeled DS-2, and the title of the
8 document is, "Performance Documentation". And if you
9 want to, take as long as you want to look at it and
10 then if you can just briefly describe to me what this
11 document is for.

12 A (Reviewing document.)

13 It says: "Slot Attendant." John Yu
14 coaching for -- I had -- the system is by points. So
15 you get points when you call out, and this look like I
16 called out maybe -- I had .5 points.

17 Q And to clarify, are we talking about the
18 attendance system?

19 A Yes.

20 Q And that you were being coached because you
21 had some absences under the attendance system?

1 coaching?

2 A Yes.

3 Q And why were you given this document at
4 coaching?

5 A Forgot my badge.

6 Q So that was the second time you received
7 documentation about forgetting your badge?

8 A Well, in this department, that's my first.
9 But, yes, that would be my second for the whole
10 Horseshoe Casino.

11 Q When did you first find out that you were
12 pregnant with your third child?

13 A On around about May the 1st I found out.

14 Q How did you learn you were pregnant?

15 A I took a pregnancy test.

16 Q Did you tell anyone at work that you were
17 pregnant?

18 A I told Kristin Carter later on and also
19 Henry Olaya.

20 Q You said later on. Before you told Kristin
21 Carter, did you tell anyone else at work?

1 A Lisa Petrovoli.

2 Q So approximately when did you share with
3 Lisa Petrovoli that you were pregnant?

4 A Around about maybe two weeks later -- no, a
5 week later. It would be a week later.

6 Q So when you say a week later -- you said
7 you had found out that you were pregnant about May 1st.
8 So are you saying you spoke to Lisa and told her you
9 were pregnant around May 7?

10 A Yes.

11 Q And when you spoke to Lisa, was anyone else
12 in that conversation besides the two of you?

13 A No. Just me and Lisa.

14 Q And what specifically did you tell Lisa?

15 A I'm pregnant. Nothing else I could really
16 say.

17 Q And why did you choose to tell Lisa?

18 A Because Lisa was a close friend at that
19 time -- well, a close coworker.

20 Q And what was Lisa's reaction?

21 A Congratulations.

1 Q Anything else?

2 A No.

3 Q And was Lisa the first person that you
4 shared your news with?

5 A Yes.

6 Q And after you spoke to Lisa, at some point,
7 did you tell anyone else at work that you were
8 pregnant?

9 A I told Kristin. That was another week
10 later.

11 Q Was that at the Kristin Carter?

12 A Yes.

13 Q So when you say another week later, is it
14 fair to say that that was around May 14th?

15 A Yes.

16 Q And when you spoke with her about the
17 pregnancy, was anyone else present?

18 A No. Just me and her.

19 Q And where were you when you spoke with her?

20 A In the -- what's called the poker room,
21 walking through the poker room.

1 Q And what did you say to her?

2 A I said I'm having another baby.

3 Q What was her response?

4 A Really. I said yes. And she looked at me
5 like congratulations, like it was -- it wasn't a happy
6 look. It was like -- like it wasn't -- you know, it
7 was like she was thinking something in her mind, but
8 she didn't say it. It just was like congratulations
9 and I said, okay, thank you.

10 Q Did she say anything else?

11 A No, she didn't say anything else.

12 Q After she said that, did you continue
13 talking about your pregnancy?

14 A No.

15 Q How did her reaction make you feel?

16 A Like I was doing something wrong or that
17 she didn't think that I should have another one or I
18 guess working there and being pregnant is not a good
19 idea. I don't know. It just -- the look that she gave
20 me was -- it made me feel sad.

21 Q Did Ms. Carter say any of those things to

1 you?

2 A No. She didn't say anything.

3 Q That was your impression?

4 A Um-hmm.

5 Q And that impression was based on the look
6 that she gave you?

7 A Yes.

8 Q Was it based on anything else?

9 A No.

10 Q And was that the only time she gave you a
11 look in conjunction with your pregnancy?

12 A Yes.

13 Q And after you spoke to Kristin, did you
14 tell anyone else at Horseshoe that you had spoken with
15 Kristin about your pregnancy?

16 A No.

17 Q So was Kristin the second person that you
18 told at Horseshoe about your pregnancy?

19 A Yes.

20 Q Did you tell anyone else about your
21 pregnancy?

1 A Henry Olaya.

2 Q When did you tell Henry Olaya?

3 A I believe it was either the same day -- I
4 think it was the same day or it might have been the
5 next day. The next day. I can't remember.

6 Q And was anyone else present when you had
7 that conversation with Mr. Olaya?

8 A No.

9 Q Where did that conversation take place?

10 A In the eatery downstairs, not cafeteria,
11 but the food court. The food court.

12 Q What specifically did you say to Mr. Olaya?

13 A I said, you know, I'm pregnant and he said
14 huh. I said yeah. And he said congratulations and I
15 said thank you and that was it.

16 Q When you said, you know, I'm pregnant, did
17 you think he already knew you were pregnant?

18 A No.

19 Q That was your way of sharing your news?

20 A Right.

21 Q Okay. I just want to make sure I

1 understand. Did he appear to be happy for you?

2 A He didn't show any emotions at all.

3 Q Okay. Were you offended or upset by his
4 response in any way?

5 A No.

6 Q So Mr. Olaya was the third person that
7 you --

8 A Yes.

9 Q -- spoke to about your pregnancy?

10 A Yes.

11 Q Did you share with anyone else at Horseshoe
12 that you were pregnant?

13 A No, not before I left.

14 Q So just so we have the timeline clear --
15 would you like another water?

16 A No. I keep on feeling like I got --

17 Q Just so I understand, you learned that you
18 were pregnant on or about May 1st, correct?

19 A Yes.

20 Q And around May 7th or so, you told Lisa
21 Petrovoli that you were pregnant?

1 A Yes.

2 Q And then about a week later, you told
3 Kristin Carter that you were pregnant?

4 A Yes, ma'am.

5 Q And either the same or the following day,
6 you told Mr. Olaya that you were pregnant?

7 A Yes.

8 Q And that for the remainder of your
9 employment at Horseshoe, you didn't tell anyone else
10 that you were pregnant?

11 A Right.

12 Q You didn't tell any of the beverage servers
13 that you were pregnant?

14 A No.

15 Q Did Lisa, Kristin, or Henry make any other
16 comments about your pregnancy that you haven't shared
17 with me today?

18 A Not that I know of, no.

19 Q So is it fair to say they didn't make any
20 other comments about your pregnancy to you directly?

21 A Right.

1 Q Are you aware of them making any comments
2 about your pregnancy to anyone else at Horseshoe?

3 A No.

4 Q Are you aware of any other Horseshoe
5 employee making any comments about your pregnancy to
6 you or about you?

7 A No.

8 Q While you were employed by Horseshoe, did
9 you ask for any accommodations due to your pregnancy?

10 A No.

11 Q While you were at Horseshoe, did you ask
12 about their maternity leave policy?

13 A No.

14 Q While you were at Horseshoe, did you ask
15 about any FMLA leave that might be available for the
16 birth of a child?

17 A No.

18 Q Did you share your due date with anyone at
19 Horseshoe?

20 A No.

21 Q Did you ever make any complaint or report

1 to anyone at Horseshoe regarding Ms. Carter's look that
2 she gave you?

3 A No.

4 Q And is it fair to say that on or about
5 May 25th you went to see your doctor to confirm your
6 pregnancy?

7 A I can't remember.

8 Q At some point, did you see your doctor to
9 confirm your pregnancy?

10 A Yes.

11 Q Do you know if that was while you were
12 still employed by Horseshoe?

13 A No, I can't remember.

14 Q Do you know if it was after you spoke with
15 Lisa, Kristin, and Henry?

16 A Yes, it was. Yes, it had to have been
17 because the only time I knew about the pregnancy was
18 when I took the pregnancy test.

19 Q So let me see if I understand. So you
20 initially found out you were pregnant through a
21 pregnancy test; is that right?

1 Q And did you share your news with them that
2 you were pregnant while you were still employed at
3 Horseshoe?

4 A I don't remember if I was still employed.

5 Q But it's fair to say that it was after the
6 doctor confirmed your pregnancy?

7 A Right.

8 Q And what were their reactions like?

9 A Congratulations.

10 Q Did you have any concerns about any of
11 their reactions?

12 A No. They actually was happy.

13 Q And did you say that you gave birth the
14 beginning of 2018?

15 A Yes, ma'am.

16 Q Now, I want to go back in time to around
17 December 15th. Around that time, you were still a slot
18 attendant; is that correct?

19 A December 15 of 2017?

20 Q I'm sorry. December in 2015.

21 A Yes.

1 Q And do you recall applying for FMLA leave?

2 A Yes.

3 Q And can you explain to me how you went
4 about applying for FMLA leave?

5 A I went to HR. HR gave me a number to call.
6 I called the number. They told me to get the
7 information from my son's doctor. I did so and I faxed
8 it over to them and then they had to approve it.

9 (Smith Exhibit 6 was marked for purposes of
10 identification.)

11 BY MS. FRIEDMAN:

12 Q Ms. Smith, you've just been given a
13 document labeled DS-6 and at the top, it says: "Family
14 Member Serious Health Condition Leave Certification
15 Form"; is that correct?

16 A Yes, ma'am.

17 Q If you could take a look at this form and
18 let me know if you've completed any portion of it.

19 A Yes, I signed it and I wrote down the
20 bottom.

21 Q So just to make the record clear, is that

1 your signature on page 1 of the exhibit which is
2 D000099?

3 A Yes, that's me.

4 Q Thank you.

5 And above your signature it says:

6 "Describe the care you will provide to your family
7 member and estimate leave needed to provide care."

8 Do you see that?

9 A Yes, ma'am.

10 Q And then there's some writing. Is that
11 your handwriting?

12 A Yes.

13 Q And can you just read to me what it says,
14 please?

15 A "Aiden required around the clock treatment
16 for his asthma and he is also on steroids and
17 antibiotics for asthma and ear infection."

18 Q And were you saying that he required around
19 the clock treatment from you?

20 A Yes, ma'am, or a provider, whoever can
21 assist him at that time.

1 Q Do you recall receiving this document?

2 A No, I don't recall receiving this.

3 Q Do you recall being told that your FMLA
4 leave was approved?

5 A Yes.

6 Q And if you take a look -- strike that.
7 Who told you that your FMLA leave was
8 approved?

9 A The young -- I mean, the people from -- the
10 number I called, they told me when I called that it was
11 approved.

12 Q Do you know if those were employees in the
13 employee service center or ESC?

14 A I believe so. I believe so.

15 Q When they told you it was approved, did
16 they say that they were going to send you a form?

17 A I don't recall.

18 Q Do you recall ever receiving something in
19 writing saying that your FMLA leave was approved?

20 A Yes.

21 Q What, if anything, do you recall from that

1 notice or form that you received approving your FMLA
2 leave?

3 A I just remember saying approved. That's
4 it.

5 Q Do you know for what period of time it was
6 approved?

7 A No.

8 Q If you could take a look again at DS-7
9 which is a leave of absence designation notice. And
10 I'll note for the record it's dated January 13th, 2016.
11 It's addressed to Diana Smith with an employee number.
12 Was that your employee number when you were at
13 Horseshoe?

14 A Oh, yes. Yes, ma'am.

15 Q Okay. And if you go down a little bit
16 further on that same document, there is a little chart
17 and it says Family Medical Leave Act. Do you see that?

18 A Yes.

19 Q And it says from January 5, 2016, through
20 January 5, 2017, and then it says approved. Do you see
21 that?

1 A Yes.

2 Q So is it your understanding that you were
3 approved for FMLA leave for that one-year period from
4 January 2016 to January 2017?

5 A Now I am, yes.

6 Q At the time, did you have any understanding
7 of the time period that you were approved for FMLA
8 leave?

9 A No.

10 Q Did you ever ask anyone for how long your
11 FMLA leave was approved?

12 A Yes.

13 Q Who did you ask?

14 A I called the number.

15 Q The employee service center?

16 A Yes.

17 Q And what did they tell you?

18 A They told me that I had 12 weeks and I
19 would say if it was -- they said I had to use 12 weeks.
20 They never said that it was, you know, 12 weeks time
21 period. They just said you use 12 weeks and once it's

1 exhausted, then it's fine. It's over.

2 Q So if I'm understanding you correctly, you
3 were told that you had 12 weeks of FMLA leave, but you
4 weren't told any time period in which you could or
5 should use it?

6 A Right.

7 Q So what was your understanding at the time?

8 A I was thinking that once I used day by day
9 12 weeks, then it will exhaust.

10 Q And -- strike that.

11 Did you use any of the FMLA leave that you
12 were approved for?

13 A Yes.

14 Q Approximately how much FMLA leave did you
15 use?

16 A I don't remember. I know I used quite a
17 few. Not 12 weeks. It probably was about two weeks
18 worth.

19 Q Was that in 2016?

20 A Yes, in 2016.

21 Q In 2017, did you use any FMLA leave?

1 A I used FMLA leave on May the 19th and
2 May 20th.

3 Q Thank you. We'll get to that later.

4 Other than May 19th and 20th, did you use
5 FMLA leave at any other point in 2017?

6 A No.

7 Q And just so we're clear, it was not your
8 supervisor who approved your FMLA leave, right?

9 A No.

10 Q It was an employee service center?

11 A Right.

12 Q And each time that you used your FMLA
13 leave, how did you tell your employer that you were
14 using it?

15 A I called in. I always use the call out
16 line and let them know that I'm using FMLA.

17 Q And did someone instruct you to do that?

18 A Yes. I was told that when you use the
19 FMLA, you have to call the call out line. That's it.

20 Q So you were told to call the call out line?

21 A Um-hmm.

1 Q Were you told to say anything specific?

2 A Yes. This is Diana Smith. I'm calling out
3 for this date and I'm using FMLA for my son. That's
4 it.

5 Q Okay. And who told you that?

6 A The employee center.

7 Q In 2016, would you say that your son
8 experienced asthma attacks at least three to four times
9 a month?

10 A Yes, he did. In 2016?

11 Q Yes.

12 A Yes.

13 Q And each time he received an asthma attack,
14 were you required to miss work to take care of him?

15 A Mainly, yes. If my husband couldn't do it,
16 yes.

17 Q And what about in 2017 between January and
18 let's just say the end of April for now? So from
19 January 2017 to April 30, 2017, did your son experience
20 any asthma attacks?

21 A Yes.

1 Q How frequently?

2 A Probably two times a month.

3 Q And did you use FMLA leave at any point
4 between January and April 30th, 2017?

5 A Yes. I used it for May 19th and May 20th.

6 Q Okay. But not prior to those days?

7 A Right, because I was over night, so I
8 didn't have to take off at that time.

9 Q So it's fair to say that you were familiar
10 with the process of asking for FMLA leave?

11 A Correct.

12 Q And you were familiar with the process of
13 how you get approved for FMLA leave?

14 A Right.

15 Q Did anyone treat you any differently after
16 you applied for FMLA leave in 2016?

17 A No.

18 Q Did anyone treat you any differently after
19 you were approved for FMLA leave in 2016?

20 A No.

21 Q Did anyone interfere with your use of the

1 FMLA leave in 2016?

2 A No.

3 Q Did anyone interfere with your use of FMLA
4 leave in 2017?

5 A No.

6 Q Did you contact the employee service center
7 at any point in 2017 about your FMLA leave?

8 A No.

9 (Smith Exhibit 8 was marked for purposes of
10 identification.)

11 BY MS. FRIEDMAN:

12 Q Ms. Smith, you've just been shown an
13 Exhibit DS-8 which is a one-page document. And is it
14 fair to say that it is an email from you at your
15 Caesar's account to Henry Olaya at his Caesar's
16 account?

17 A Yes.

18 Q And can you read the content of the email?

19 A "I would like to request 5/19 to 5/22/17
20 off. It is very important. Please if possible."

21 Q Why were you requesting to take off on

1 those days?

2 A I was still very -- I felt very overworked.
3 I felt -- I just found out I was pregnant and I needed
4 some time off.

5 Q Was there any reason you chose those
6 specific days from May 19th to May 22nd?

7 A Because I knew probably no one else would
8 have those days off.

9 Q Did you make any plans to go away during
10 the period May 19th to May 22nd?

11 A No.

12 Q When is your sister, Christina Smith's
13 birthday?

14 A July 21st, 1987.

15 Q What month and day is your friend, Chaquita
16 Williams' birthday?

17 A April -- I mean, May 20th, May 20th, 1988.

18 (Smith Exhibit 9 was marked for purposes of
19 identification.)

20 BY MS. FRIEDMAN:

21 Q Ms. Smith, you've just been shown an

1 I'm sorry.

2 MS. FRIEDMAN: Would you mind repeating it,
3 please.

4 (Reporter read back the record as requested.)

5 THE WITNESS: Okay. So on May the 21st is
6 when I was supposed to go to Ocean City. I went to
7 Ocean City on -- I was supposed to go to Ocean City on
8 May the 21st, but I wasn't planning on going the 19th
9 and the 20th.

10 BY MS. FRIEDMAN:

11 Q Okay. So as of May 18th, you had plans to
12 go to Ocean City on May 21st?

13 A Yes.

14 Q What about May 22nd?

15 A I was supposed to come back on May 22nd.

16 Q And when did you make those plans to go to
17 Ocean City on May 21st and come back on May 22nd?

18 A On May the -- on May the 17th, my sister
19 called me and asked me did I want to go to Ocean City.
20 And I told her I had to be home with the baby on May
21 the 19th or I told her I had to work on May the 19th

1 and May 20th. And she said okay. I said, well, I'll
2 come down on May the 21st. She said okay and then that
3 was it.

4 Q Okay. Was there any special reason that
5 your sister invited you down to Ocean City?

6 A Yes. My best friend birthday was that
7 week.

8 Q Was that Chaquita Williams?

9 A Yes.

10 Q So was it your sister, Christina Smith,
11 Chaquita Williams, and yourself?

12 A Yes, and there was two other females.

13 Q And what were their names?

14 A Freanne Myers was my friend, and there was
15 another young lady that met them down there at the time
16 they went.

17 Q And what is her name?

18 A Her name is Shicara. I don't know her last
19 name, but Shicara.

20 Q Okay. And was it your sister who invited
21 you to Ocean City?

1 A Yes.

2 Q Did she have a house there?

3 A No.

4 Q Where did you stay?

5 A The Inlet Lodge. It was a motel.

6 Q And what days did she invite you to Ocean
7 City with her?

8 A Well, I told her that I will come down on
9 the 21st. That was May the 21st, but I went down on
10 May the 20th that afternoon, that night.

11 Q Okay. And when did she go down?

12 A She went down on May the 19th.

13 Q And what about Chaquita?

14 A Chaquita went down with me on May the 20th.

15 Q Was your sister alone down there in Ocean
16 City?

17 A No. Freanne Myers went with my sister and
18 Shicara met them down there -- well, she was already
19 down there.

20 Q And did they all stay in the same room the
21 three of them?

1 those days, did you?

2 A The 21st I did.

3 Q Okay.

4 A The 22nd I was already off, but I believe
5 he still used PTO for that date also.

6 Q Okay. Did you ever ask him to change that
7 to make them regular days off for you?

8 A No, I don't recall. I don't think so.

9 (Smith Exhibit 11 was marked for purposes
10 of identification.)

11 BY MS. FRIEDMAN:

12 Q Is it fair to say that this is a revised
13 May beverage schedule --

14 A Um-hmm.

15 Q -- on DS-11?

16 A Yes.

17 Q And if you take a look at the schedule,
18 were you scheduled to work on May 19th and 20th?

19 A Yes, I was.

20 Q And what about May 21st and 22nd?

21 A No, I wasn't.

1 that you were aware that you were scheduled to work on
2 May 19th and 20th, correct?

3 A Yes.

4 Q Do you recall making a request to Mr. Olaya
5 in May to take PTO from July 27 to August 1st?

6 A No, I don't recall. No.

7 Q Do you recall mentioning to him that it was
8 your children's birthdays and you wanted to take
9 vacation during that time?

10 A That is their birthday, so I maybe did, but
11 I -- it is their birthdays, so I might have said that.

12 Q But you're saying you don't recall that?

13 A I don't recall it.

14 Q Just to make it clear for the record,
15 you're saying you don't recall whether you requested
16 vacation from July 27th to August 1st?

17 A Right.

18 Q It's fair to say you don't recall being
19 denied PTO for the period July 27th to August 1st?

20 A Right.

21 Q I want to focus on May 18th of 2017.

1 A Okay.

2 Q Did Kristin Carter reach out to you that
3 day?

4 A Yes, ma'am.

5 Q And was that by phone or in person?

6 A By phone.

7 Q Did she call your cell phone?

8 A Yes.

9 Q Do you recall what time that was?

10 A Around 5:30 p.m.

11 Q And when she called you, what did she say?

12 A She said that I was told that you might be
13 calling out tomorrow which is May 19th for your son.
14 And I told her, yes, I was trying to get Katya and Lisa
15 to work for me and both of them told me that they
16 couldn't work for me. So I was trying to call around
17 to see if someone else can take my son to the doctor's
18 and I hadn't heard anything yet, but I wasn't going to
19 call out yet. But if I do, I was going to let you all
20 know. That was it.

21 Q Did you say that you were going to use the

1 call out line?

2 A Yes.

3 Q What was Kristin's response to that?

4 A That was inappropriate because managers and
5 supervisors don't use the call out line. So I said
6 okay.

7 Q Did -- was there any discussion of whether
8 you would come to work on May 20th when you spoke to
9 Ms. Carter on May 18th?

10 A Yes. She asked me what was I going to do
11 on May 20th. I said, well, can you grant me May 20th
12 off also because I know that I will have to continue
13 treatment for my son for 24 hours which will be May the
14 20th.

15 Q And what was her response?

16 A Yes.

17 Q What else was said during your
18 conversation?

19 A She asked me did I want to use my PTO time
20 and I told her yes.

21 Q What else was said?

1 A She asked me -- she asked -- she did ask
2 was my son okay, but -- and I also told her that --
3 that I wasn't -- she knew that I wasn't feeling good.
4 I had a little cough. But if my son was okay, then I
5 will probably take it upon myself to go to the doctor,
6 but I wasn't really worried about myself at that time.
7 I was worried about my son.

8 Q Did you say that you were making a doctor's
9 appointment for yourself?

10 A No, not at all.

11 Q Did you indicate that if your son was well
12 that you might make a doctor's appointment for
13 yourself?

14 A Yes.

15 Q And you told that to Kristin?

16 A Yes.

17 Q And did you say that if he was well, you
18 would make a doctor's appointment for yourself that
19 Saturday, May 20th?

20 A No, I never stated a date.

21 Q During that conversation, did you tell

1 Kristin that you needed FMLA leave?

2 A Yes, I did.

3 Q Did you use the words FMLA leave?

4 A No. I just said leave. I didn't say FMLA.

5 Q So can you tell me -- you said leave in
6 what context?

7 A I just said I will have to take leave for
8 my son on May the 20th. That was it.

9 Q Did you ever say that you needed to take
10 leave to care for yourself?

11 A No.

12 Q And was it only that you needed to take
13 leave to care for your son on May 20th or were you also
14 talking about May 19th?

15 A May 19th and May 20th.

16 Q Did you ever reach out to the employee
17 service center to apply for FMLA leave for May 19th and
18 20th?

19 A No, I never knew that I had to.

20 Q How far is your home from Horseshoe?

21 A About 40 minutes -- not even 40 minutes.

1 Q On May 19th, was he experiencing skin
2 problems?

3 A He always experience skin problems. So,
4 yes, he was.

5 Q Was he experiencing a rash on May 19th?

6 A Yes.

7 Q So when you saw -- strike that.

8 So you saw Dr. Kelly on May 19th, right?

9 A Yes.

10 Q And he discussed your son's asthma; is that
11 correct?

12 A Yes.

13 Q Did he discuss any other medical problems?

14 A Well, his -- I think he had -- he had gave
15 him some type of -- I think he gave him prednisone. I
16 don't know if he gave him prednisone, but that was for
17 his asthma. He gave him some steroids, some other
18 steroids for his skin because it is part of the asthma.

19 Q And then if you could look at the last page
20 of the document, please, which is DS-351. And the last
21 line of that, do you see where it says encounter

1 Q Did you ask Dr. Kelly for any type of note
2 showing that you were at the office?

3 A Yes.

4 Q Why?

5 A Because I knew that I would have to submit
6 it when I get back to work.

7 Q And did Dr. Kelly prescribe any follow-up
8 treatment for your son?

9 A Yes.

10 Q And what was that?

11 A Just that regular follow-up. That was it
12 for his asthma.

13 Q What did that consist of?

14 A It was just making sure that he was okay
15 after the treatment, after he took his medication and
16 everything.

17 Q So when you're saying for his treatment, I
18 want to make sure I understand. So you saw Dr. Kelly
19 on May 19th?

20 A Yes.

21 Q And he prescribed some medication?

1 it was later than 4:00, but I can't really remember
2 exactly what time it was the time we got there.

3 Q Was it dark out when you got there?

4 A No, no. It wasn't dark, no.

5 Q What did you do when you arrived in Ocean
6 City?

7 A Just went and got a hot dog off the
8 boardwalk and just like stayed in the hotel room for
9 the remainder of the day. We went out for a little bit
10 to the boardwalk, but it was like an hour and that was
11 it.

12 Q And you didn't bring any of your children
13 with you, did you?

14 A No.

15 Q Did you spend any money while you were in
16 Ocean City?

17 A Yes.

18 Q And did you use a debit card or credit card
19 to pay for any of your purchases?

20 A Just cash.

21 Q And who was watching Aiden when you were in

1 been here four hours yet." Did you write that?

2 A Yes.

3 Q And what does that refer to?

4 A The girls was tore up and we haven't been
5 there for four hours yet.

6 Q So who were the girls that tore up?

7 A My sister, Shicara, Chaquita. They was
8 drinking.

9 Q Okay. So you came home on May 21st?

10 A Yes. Yes, Sunday.

11 Q And then you were off on May 22nd; is that
12 correct?

13 A Yes.

14 Q And you were off May 23rd?

15 A Yes.

16 Q And did you return to work on May 24?

17 A Yes, ma'am.

18 Q So that was your next scheduled work day?

19 A Yes, ma'am.

20 Q When you came back to work, did you bring
21 the note from Dr. Kelly?

1 A Yes, ma'am.

2 Q And did you give that note to anyone?

3 A Yes. I put it -- actually, no one was
4 there. I put it on Kristin Carter's desk.

5 Q At the beginning of your shift?

6 A Yes.

7 Q And what happened that day at work?

8 A I went about my regular normal day and then
9 around about 3:00, I was asked to bring the clipboard
10 upstairs to the office. As I did so, I got to the
11 office. Kristin, Jay -- Kristin Carter, Kristen
12 Burkowske, Jay Lattimer, and Henry Olaya was all in the
13 office dressed in regular clothes. I spoke, never
14 thought anything.

15 When I went to leave out the door, they
16 asked me can they see me in the office. I asked
17 Kristin Carter did you get my doctor's note off your
18 desk. She said, oh, was that your doctor's note? I
19 said yes. She said, oh, I slid it to the side. I
20 said, oh, yeah. It's on your desk.

21 So she went to find it and then I went into

1 the office. And then Jay Lattimer told me that he
2 was -- he had papers for me to be separated from
3 employment, but he wanted to hear my side of the story
4 because he heard it was a no call, no show. And I told
5 him my side of the story. He said he was going to
6 cancel the termination and suspend me until further
7 notice until -- pending an investigation and he took my
8 badge and I left out, walked out.

9 Q Was that the first time you met Jay
10 Lattimer?

11 A No.

12 Q Can you tell me other occasions when you
13 would have interacted with him?

14 A Not very so often. Maybe if he have a
15 group meeting or something or something he want to say,
16 he'll just call us to the restaurant and just tell
17 everybody as a whole. I never really see him at all.

18 Q Was that the first time you had a
19 conversation directly with him?

20 A Yes.

21 (Smith Exhibit 21 was marked for purposes

1 of identification.)

2 BY MS. FRIEDMAN:

3 Q Ms. Smith, I've just given you a document
4 that's been labeled DS-21. That stated it's a
5 "Performance Documentation" given to you in your
6 position as a beverage supervisor.

7 A Yes.

8 Q And it is a suspension pending
9 investigation; is that correct?

10 A Yes, ma'am.

11 Q And did you sign this document?

12 A Yes, ma'am.

13 Q And that's your signature on May 24th,
14 2017?

15 A Yes, ma'am.

16 Q And before you signed this document, did
17 you read it carefully?

18 A No.

19 Q Okay. Did you read it at all?

20 A Yes.

21 Q When you say you didn't read it carefully,

1 Q Were you given a termination performance
2 documentation on that day initially?

3 A No. I was supposed to, but he changed it
4 to suspension.

5 Q And did you tell him your whole story that
6 day?

7 A Yes. And he understood it very well.

8 Q And did you say anything about the Facebook
9 post in that conversation?

10 A No, not at all.

11 Q Did you ask to see a copy of the Facebook
12 post?

13 A No.

14 Q Did you mention anything about FMLA leave
15 in that discussion on May 24th?

16 A No.

17 Q Did you mention anything about your
18 pregnancy in that discussion on May 24th?

19 A No.

20 Q So you worked your full shift on May 24th?

21 A Yes, ma'am.

1 conversation?

2 A He just said, Diana, I need you to come in
3 as soon as possible. I said, okay, I'm on my way. I
4 was already halfway dressed probably by then.

5 (Smith Exhibit 22 was marked for purposes
6 of identification.)

7 BY MS. FRIEDMAN:

8 Q So you've just been given an exhibit
9 labeled DS-22. It's also entitled performance
10 documentation. And I'll represent to you that it's a
11 separation of employment for you in your position as
12 beverage supervisor; is that correct?

13 A Yes.

14 Q And did you sign this document?

15 A Yes.

16 Q Is that your signature next to the date of
17 May 26th, 2017?

18 A Yes.

19 Q Before you signed this document, did you
20 read it?

21 A No.

1 Q Why not?

2 A Because it was the same one that I already
3 received.

4 Q Did someone tell you it was the same one?

5 A When I first looked at it, you can tell it
6 was the same.

7 Q And what about it told you that it was the
8 same document?

9 A April 26th, as soon as I start reading it,
10 I thought it was the same document, but I kind of read
11 that. I mean, everything was going to be the same on
12 there, so there was no need to read it. I was already
13 terminated.

14 Q And tell me about the meeting on the 26th.
15 Who was there?

16 A On the 26th, Jay Lattimer and I think
17 Henry. I can't remember.

18 Q And what did they tell you during that
19 meeting?

20 A They were going to go ahead with the
21 separation of employment.